

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 95-0234IT
Corporate Income Tax
For Years 1984 through 1993**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Income Tax – Imposition**

Authority: Ind. Code § 6-3-4-1;
Ind. Code § 6-8.1-5-1.

The taxpayer protests the results of the income tax audit.

II. Tax Administration – Penalty

Authority: Ind. Code § 6-8.1-10-2.1.

The taxpayer protests the assessment of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is an Indiana corporation that assembles and sells hospital admission kits. The taxpayer also makes other retail sales including various types of medical supplies and equipment. Additionally, the taxpayer manufactures and sells an EKG cable cleaning solution. The taxpayer has not filed an Indiana corporate income tax return since incorporation in 1983. An income tax audit based on the best information available was completed on February 20, 1995, for the period 1984 through 1993.

I. Income Tax – Imposition**DISCUSSION**

The taxpayer protests the results of the income tax audit, claiming that the figures used by the auditor were not accurate. Specifically, the taxpayer claims: 1.) that the auditor did not consider all financial records that were available during the audit; 2.) that the corporation is operated out of the president's home and no adjustment was made for the use of the garage space for business purposes; 3.) that the taxpayer's personal telephone line was the FAX line and presumably should have been an exempt business expense; and 4.) that no adjustment was given for business related travel expenses.

1. Financial Records

The taxpayer has not filed an Indiana corporate income tax return since incorporation in 1983. "Every corporation having for the taxable year any gross income from sources within the state of Indiana" must file a tax return with the Department of Revenue. Ind. Code § 6-3-4-1(3). The taxpayer maintains that the audit report was inaccurate. The audit report was based on incomplete monthly bank statements for the period 1991 to 1993. From this information, the auditor projected income amounts for the periods for which financial records were not available. The audit report was thus based on the best information available.

At the administrative hearing, the taxpayer submitted additional records in the form of check registers for the entire period covered by the audit report. Since the original audit was based on projected income amounts and the taxpayer has submitted more complete financial records, the income amounts should be recomputed based on the information submitted by the taxpayer at the hearing.

2. Garage Space Used for Business Purposes

The taxpayer corporation is operated from the personal home of the company's president. The taxpayer maintains that the garage area is used for business purposes most of the time but no adjustment was made for this in the audit report. The taxpayer has submitted photographs that appear to show the garage area being used for business purposes. The audit report does not specifically mention the garage area. The taxpayer is sustained on this issue, subject to verification in a supplemental audit.

3. Telephone Used for Business Purposes

In its protest letter, the taxpayer states, "[T]he personal phone line is our FAX line." The taxpayer apparently believes that the entire expense for that telephone line should be exempt as a business expense. The taxpayer submits no evidence to support its claim. The taxpayer has the burden of proving that the assessment is wrong. Ind. Code § 6-8.1-5-1(b).

The auditor found that there was a personal phone line and a business phone line which had separate bills for basic service and a toll-free service. The three monthly bills were compared and the auditor determined that eighty-five percent (85%) of the total telephone expenses were deductible as business expenses. The Department finds that this is a

reasonable determination. In the absence of evidence to the contrary, the taxpayer's protest of this issue is denied.

4. Business Related Travel Expenses

The taxpayer maintains that it kept an accurate account of miles driven during the period covered by the audit and that approximately seventy-five percent (75%) was for business purposes. The taxpayer claims that this information was offered to the auditor but no adjustment was made. The taxpayer has submitted no evidence supporting its position on this issue. The taxpayer has the burden of proving that the assessment is wrong. Ind. Code § 6-8.1-5-1(b). The taxpayer's protest of this issue is denied.

FINDING

The taxpayer's protest is partially sustained and partially denied. The taxpayer is sustained on the issues of Financial Records and Garage Used for Business Purposes, subject to verification in a supplemental audit. The taxpayer is denied on the issues of Telephone Used for Business Purposes and Business Related Travel Expenses.

II. Tax Administration – Penalty

DISCUSSION

The taxpayer was assessed a ten percent (10%) negligence penalty for its failure to remit income taxes. In Indiana, if a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence; or
- (4) fails to timely remit any tax held in trust for the state;

that person is subject to a ten percent (10%) penalty.

Ind. Code § 6-8.1-10-2.1(a).

A taxpayer may avoid a penalty by making an affirmative showing in a verified written statement that there was reasonable cause for failure to pay the tax. Ind. Code § 6-8.1-10-2.1(e). The taxpayer has not provided the Department with reasonable cause for its failure to pay the tax deficiencies. The penalty in this case is proper.

FINDING

The taxpayer's protest is denied.

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